

APPEAL NO. 040209
FILED MARCH 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 29, 2003. The hearing officer determined that the compensable injury of _____, does not extend to include right carpal tunnel syndrome, right cubital tunnel syndrome, right de Quervain's syndrome, left knee post-traumatic arthritis and avascular necrosis, and facet arthritis of the cervical, thoracic, and lumbar spine, or an aggravation of those conditions. The appellant (claimant) appeals this determination on sufficiency of the evidence grounds and appears to argue that the respondent (self-insured) waived its right to dispute the claimed conditions. No response was filed.

DECISION

Affirmed.

As stated above, the claimant appears to argue that the self-insured waived its right to dispute the claimed conditions. The issue of waiver was not before the hearing officer, nor was it actually litigated. Accordingly, we will not address it for the first time on appeal.

The hearing officer did not err in making the complained-of determination. The determination involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer considered the evidence and found that the above conditions did not result from the compensable injury. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant also complains of ineffective assistance from her ombudsman at the hearing. We have said that an ombudsman is not a legal representative, that the ombudsman is at the CCH to assist the claimant, and that the presentation of the case remains the responsibility of the claimant. See Texas Workers' Compensation Commission Appeal No. 001766, decided October 2, 2000. Additionally, the claimant did not raise this matter at the hearing. Accordingly, we find no basis to reverse the hearing officer's decision.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**EXECUTIVE DIRECTOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge